

<p style="text-align: right;">Page 61</p> <p>1 owners as I'm passing across it. It may have been 2 in conjunction with safety training. I don't 3 recall.</p> <p>4 Q Does Marine Safety Consultants do safety training 5 for vessel owners?</p> <p>6 A Yes.</p> <p>7 Q Who at Marine Safety Consultants actually is an 8 instructor?</p> <p>9 A Myself.</p> <p>10 Q Who else?</p> <p>11 A Mr. Rick Harden, H A R D E N.</p> <p>12 Q Anyone else?</p> <p>13 A Mr. Tom Tulus is a drill conductor.</p> <p>14 Q Anyone else?</p> <p>15 A Mr. Dana Collier is a drill conductor.</p> <p>16 Q Is there anyone else?</p> <p>17 A Collier also is a drill conductor, but he is not 18 actively involved in doing that except on a fill-in 19 basis. It's primarily Tom. Tom Tulus, Dana Collier 20 and Rick Harden.</p> <p>21 Q How frequently do you yourself do instruction, 22 safety instruction training when you are being paid?</p> <p>23 A Last time was last Thursday that I put on a one-day 24 course.</p>	<p style="text-align: right;">Page 63</p> <p>1 or safety drills which are mandated by the federal 2 government involve the operation of winches?</p> <p>3 A Not specifically the operation of the winches; but 4 as far as recognition of hazards and safety guards 5 on winches and blocks and machinery, there is a 6 requirement that boat owners and operators maintain 7 safety guards and just a general plan that the 8 machinery be kept in good operating condition.</p> <p>9 Q Is there a specific regulation that requires moving 10 machinery, rotating machinery have a safety guard on 11 it when it's on a commercial fishing vessel, 12 correct?</p> <p>13 A Yes.</p> <p>14 Q But with respect to mandatory training instruction 15 and drills, none of that mandatory training, 16 instruction and drills relates to the operation of 17 the winch. Would you agree with that?</p> <p>18 A Not specifically the operation of the winch but in 19 the operation of the vessel as a whole, the concept 20 of safe work practices is stressed in the safety 21 training programs.</p> <p>22 Q But --</p> <p>23 A It's part of the curriculum.</p> <p>24 Q You would agree with me with regard to the coast</p>
<p style="text-align: right;">Page 62</p> <p>1 Q Who was that for?</p> <p>2 A The City of New Bedford Fishing Vessel Safety Task 3 Force.</p> <p>4 Q Is that a government type of organization? What is 5 it?</p> <p>6 A City of New Bedford couple years ago promoted active 7 involvement in fishing vessel safety training, and a 8 task force of professionals was put together at the 9 request of the city and then a team of instructors 10 and trainers started putting on safety training 11 classes for the City of New Bedford on behalf of or 12 through the cognizance of the City of New Bedford; 13 and also performed for Massachusetts Fisherman's 14 Partnership and individual boat owners or fleet 15 owners will call and ask for training or drills.</p> <p>16 Q There is a coast guard requirement for safety 17 training and safety drills on commercial fishing 18 vessels, correct?</p> <p>19 A A federal regulation.</p> <p>20 Q And that requires there would be specific types of 21 safety training and specific types of safety drills 22 on commercial fishing vessels, correct?</p> <p>23 A Yes.</p> <p>24 Q You agree with me that none of that safety training</p>	<p style="text-align: right;">Page 64</p> <p>1 guard regulations that require safety training and 2 safety drills, they are fairly specific in terms of 3 what must be trained and what must be drilled?</p> <p>4 Would you agree with that?</p> <p>5 A That's correct.</p> <p>6 Q For example, survival suits, must instruct the crew 7 regarding survival suits, and there are specific 8 drills with respect to the crew must actually go 9 through a set of drills with survival suits, 10 correct?</p> <p>11 A That's correct.</p> <p>12 Q The same is not true with respect to operation of 13 the winches?</p> <p>14 A No. As I said, there is no specific requirement of 15 training of the operation of the winches, but there 16 is in the curriculum the concept of safe work 17 practices to prevent accidents from happening 18 involving the entire vessel, not just a specific 19 piece of equipment.</p> <p>20 Q You would agree with me there is no coast guard 21 requirement on an inspected fishing vessel that the 22 operators of the vessel, there is no requirement 23 that the operators of the vessel train the crew 24 specifically with respect to operating the main</p>

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<p>1 winch?</p> <p>2 A That's correct.</p> <p>3 Q And there is no coast guard regulation that says</p> <p>4 they must drill, perform drills prior to the boat</p> <p>5 leaving the dock with respect to the operation of</p> <p>6 the main winch?</p> <p>7 A That is correct.</p> <p>8 [Exhibit 5 marked for identification]</p> <p>9 Q I'm going to show you a document marked as Exhibit</p> <p>10 5. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q That is your most recent affidavit?</p> <p>13 A Yes.</p> <p>14 Q Directing your attention to item 10, paragraph 10 --</p> <p>15 A Yes.</p> <p>16 Q -- it says "I have been on this boat and observed</p> <p>17 the operation of the winch in the past and am</p> <p>18 familiar with it's characteristics."</p> <p>19 A Yes.</p> <p>20 Q When were you on the boat and observed operation of</p> <p>21 the winch?</p> <p>22 A Well, I have been on this boat and observed the</p> <p>23 operation of this type of winch in the past. That's</p> <p>24 what I intended to say there. I have not seen this</p>	<p>Page 65</p> <p>1 A This is what I'm going to charge, a thousand dollars</p> <p>2 an hour.</p> <p>3 Q We have the next page on Exhibit 6 we have your</p> <p>4 resumé?</p> <p>5 A Yes.</p> <p>6 Q The last page of Exhibit 6, is this a history of all</p> <p>7 the cases that you have testified to since 2003?</p> <p>8 A That's what it says. That's what it is.</p> <p>9 Q Is the last page of Exhibit 6 all the cases which</p> <p>10 you have testified in since the year 2003?</p> <p>11 A I believe it is, whether or not -- Here is my</p> <p>12 practice: When I testify in a case like today, I go</p> <p>13 back to the office and I'll ask my secretary to</p> <p>14 include this case on my list to add it on. Whether</p> <p>15 or not someone had fallen through the cracks, I</p> <p>16 won't say these are the only cases, but to the best</p> <p>17 of my knowledge these are the only cases I have</p> <p>18 testified on in 2003, 2004, 2005 and 2006 including</p> <p>19 today's as an added.</p> <p>20 Q You are aware when you testify as expert witness in</p> <p>21 a federal court case that you have got to give the</p> <p>22 other side a list of cases that you have testified</p> <p>23 in in the last four years?</p> <p>24 A Yes, that's why I maintain this.</p>
<p>Page 66</p> <p>1 specific winch in operation. I may have, but I</p> <p>2 don't recall specifically, but I have seen this type</p> <p>3 of winch.</p> <p>4 Q So you have been on this boat, correct?</p> <p>5 A Yes.</p> <p>6 Q FISHING VESSEL MY WAY?</p> <p>7 A Yes.</p> <p>8 Q And you have also observed the operation of Marco</p> <p>9 brand winches?</p> <p>10 A Yes.</p> <p>11 Q But you have never observed the operation of the</p> <p>12 Marco winch that was on the MY WAY, is that correct?</p> <p>13 A I may have but I don't have a specific memory for</p> <p>14 this case of operating -- I did not operate this</p> <p>15 winch or see it in operation before this case.</p> <p>16 [Exhibit 6 marked for identification]</p> <p>17 Q I show you another document that we'll mark as</p> <p>18 Exhibit 6. This is a cover letter that you sent to</p> <p>19 Mr. Regan dated September 21.</p> <p>20 A Yes.</p> <p>21 Q Your hourly rate is 85 bucks an hour?</p> <p>22 A Off the record I think it's up to 250 now. Yes,</p> <p>23 that's my rate.</p> <p>24 Q That's what you are going to charge me?</p>	<p>Page 66</p> <p>1 Q 2006 you listed two cases the SHEARWATER and Frank</p> <p>2 Saco?</p> <p>3 A Yes.</p> <p>4 Q SHEARWATER, what was that case about?</p> <p>5 A The SAILING VESSEL SHEARWATER case involved a wooden</p> <p>6 hull sailing scalloper that is a coast guard-</p> <p>7 certified passenger vessel that was hauled out of</p> <p>8 the water in New York on Long Island; and while they</p> <p>9 were launching it, the travel lift suffered an</p> <p>10 accident and the vessel suffered some damage. So I</p> <p>11 was called to give deposition as to the extent of</p> <p>12 the damages that I observed when I did a damage</p> <p>13 survey.</p> <p>14 Q You performed a damage survey on the SHEARWATER?</p> <p>15 A Yes.</p> <p>16 Q And your expertise is the cost of the repairs?</p> <p>17 A Extent of the damages and the estimated cost of</p> <p>18 repairs.</p> <p>19 Q You were initially hired by the hull insurer?</p> <p>20 A Well, there were three parties involved with that</p> <p>21 case. There's the ship owner, the shipyard and --</p> <p>22 and the ship. Two parties. I was called by the</p> <p>23 ship owners. I'm sorry, I was called by the</p> <p>24 shipyard's attorney to give testimony as to what I</p>

<p style="text-align: right;">Page 69</p> <p>1 observed during the survey. There were three 2 surveyors involved.</p> <p>3 Q When you performed the survey of the SHEARWATER, who 4 hired you when you performed the survey?</p> <p>5 A The hull underwriters on behalf of the vessel owner.</p> <p>6 Q Underwriters is the name of the insurance company, 7 the marine insurer?</p> <p>8 A Yes.</p> <p>9 Q The testimony you gave by deposition, was that, were 10 you listed as an expert witness in that case?</p> <p>11 A No.</p> <p>12 Q Did the people who hired you, were they the ones who 13 wanted you to testify or some other person?</p> <p>14 A Some other person.</p> <p>15 Q Do you know why they wanted you to testify if they 16 didn't hire you?</p> <p>17 A Well, do you want me to tell you the facts of the 18 case?</p> <p>19 Q No. Do you remember coming in low and the other 20 side --</p> <p>21 A No, nothing to do with that.</p> <p>22 Q Frank Saco, Frank Saco you testified at trial. What 23 kind of case was Frank Saco?</p> <p>24 A A tugboat case. Mr. Saco was a crew member aboard a</p>	<p style="text-align: right;">Page 71</p> <p>1 Q Have you ever worked as a crew member on a sailboat?</p> <p>2 A Yes.</p> <p>3 Q Was that at the academy?</p> <p>4 A Yes.</p> <p>5 Q On the EAGLE?</p> <p>6 A Yes.</p> <p>7 Q Since the EAGLE have you ever worked as a crew 8 member on the sailboat?</p> <p>9 A No.</p> <p>10 Q In the case in 2005, Steve Powell, what type of case 11 was that?</p> <p>12 A It was a seaman's injury case on a commercial 13 fishing vessel.</p> <p>14 Q What we talked about, a Jones Act case?</p> <p>15 A Yes.</p> <p>16 Q Were you hired as an expert witness?</p> <p>17 A I don't recall if I was an expert witness or a fact 18 witness. It is a deposition in my office. I don't 19 recall. Never went to trial.</p> <p>20 Q Who was the defense attorney?</p> <p>21 A I believe that was Tom Muzyka.</p> <p>22 Q Who was the plaintiff's attorney?</p> <p>23 A An attorney from New Jersey. I don't recall his 24 name.</p>
<p style="text-align: right;">Page 70</p> <p>1 tugboat and he was bringing a suit against the 2 owners of the tugboat.</p> <p>3 Q Was it a Jones Act case?</p> <p>4 A Yes.</p> <p>5 Q Jones Act case is when a seaman gets injured on the 6 job and wants money?</p> <p>7 A Yes, that's one quick summary of it.</p> <p>8 Q Were you testifying as an expert witness?</p> <p>9 A Yes.</p> <p>10 Q Were you testifying as an expert witness on behalf 11 of the defense attorney?</p> <p>12 A Yes.</p> <p>13 Q Who was the defense attorney?</p> <p>14 A Clinton & Muzyka.</p> <p>15 Q Who specifically at Clinton & Muzyka?</p> <p>16 A Tom Muzyka.</p> <p>17 Q Who was the plaintiff's attorney, if you know?</p> <p>18 A Mr. Kaplan.</p> <p>19 Q David Kaplan?</p> <p>20 A Yes.</p> <p>21 Q Have you ever worked on a tugboat before?</p> <p>22 A Have I ever worked on a tugboat?</p> <p>23 Q As a crew member.</p> <p>24 A No.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q Tom Muzyka represented the --</p> <p>2 A -- boat owner, yes.</p> <p>3 Q And next case Roland Caron?</p> <p>4 A Caron.</p> <p>5 Q What was that case about?</p> <p>6 A Mr. Caron was a crew member aboard a commercial 7 fishing vessel from Portland, Maine, and he 8 allegedly suffered an injury and it involved the 9 facts and circumstances surrounding that injury.</p> <p>10 Q Did the Powell case, what was the piece of equipment 11 that involved in Mr. Powell's alleged injury?</p> <p>12 A There was no piece of equipment. His hand became 13 infected.</p> <p>14 Q Fish poisoning?</p> <p>15 A It is called fish poisoning, but it's not 16 necessarily -- They call it fish poisoning because 17 it happens aboard a fishing vessel, but it's not 18 necessarily involving fishing.</p> <p>19 Q What was your area of expertise in the Powell case?</p> <p>20 A I was a fact witness as to when I inspected during 21 the investigation aboard the vessel.</p> <p>22 Q And more specifically?</p> <p>23 A Well, Powell stated, claimed that he suffered his 24 infection, his hand became infected while aboard</p>

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